IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.9357 OF 2004

Mr.Bacharam Appa Kesarkar ...Petitioner

Vs.

M/s.Swan Mills Ltd. and Ors. ...Respondents

....

Mr.S.M.Shettigar for Petitioner
V.P.Vaidya for Respondent no.1.

....

CORAM : B.H.MARLAPALLE,J.

DATE : JANUARY 25,2005

P.C.:

1. Heard Mr.Shettigar, the learned counsel for the petitioner who had approached the Industrial Court in Complaint (ULP) No. 732 of 1996 and challenged the order of superannuation with effect from 1.7.1996. He contended that his date of birth was wrongly recorded and as per the School Leaving Certificate issued by the School i.e. Vidya Mandir at Sule it is 1.6.1948 and therefore, he could not have attained the age of superannuation as on 30.6.1996. The Industrial Court dismissed the complaint by the impugned judgment dated 13.7.2004.

2. The learned counsel for the petitioner referred to the evidence of Shri.Mahadeo Kamble the Principal of Vidya Mandir School and submitted that the School

Leaving Certificate was duly proved and therefore, the Industrial Court fell in gross errors in not accepting the same.

3. It is noticed that the employer had examined its witnesses Mohan Sawant who was working as a Time Keeper since 1969 and Shri.Jayprakash Amin, Deputy Manager (Labour) Finlay Mills. The evidence of the petitioner himself at Exhibit-UW-1 and two witnesses examined by the employer collectively showed that the petitioner was working with the respondent Mill for the first phase till 1966 and thereafter, he had joined Finlay Mills with effect from 14.3.1967. He left the said employment on 17.4.1988. He was engaged as Badli worker by the present respondent Mill on 6.6.1991. His service book was prepared and on his declaration his year of birth was recorded as 1936. The service book entries were signed by him. The respondent employer had approached the Finlay Mills to verify the date of birth and the record supplied by the said Mill like the entries of the service book, ESI and Provident registers etc. confirmed that he was born sometimes in June, 1936.

4. When the Mill started enquiries about his documents in support of the date of birth declared, he appears to have approached the School which issued him the School Leaving Certificate for the first time

on 4.7.1996 and certified that his date of birth was 1.6.1948 and the said Certificate was submitted to the respondents only after the order of superannuation was issued.

5. The learned Member of the Industrial Court has considered the evidence of all the four witnesses as well as documentary evidence which the present respondent as well as Finlay Mills and refused to interfere with the order of superannuation. The reasoning given by the Industrial Court cannot be termed as grossly erroneous or perverse on any ground and therefore, the challenge to the impugned order is devoid of merits. The said order does not call for any interference under Article 227 of the Constitution of India. Hence, the petition is rejected summarily.

[B.H.MARLAPALLE,J.]